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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 665

WILLIAM ROBERT KLEIN,

Petitioner,

—v.—

SOLOMON A. KLEIN,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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Petitioner seeks review of an order of the New York Court of Appeals, entered July 7, 1966, which unanimously affirmed an order of the Appellate Division, Second Judicial Department, disbarring him from the practice of law for professional misconduct.

Opinions Below

The opinion of the Appellate Division is reported in 23 A.D. 2d 356. The opinion of the Court of Appeals is reported in 18 N.Y. 2d 598.

Jurisdiction

The order of the Court of Appeals affirming petitioner's disbarment was entered on July 7, 1966. Thereafter petitioner filed an application, sworn to August 17, 1966, for a "two-fold stay" pending submission and determination of a petition "to be made" for a writ of certiorari. On September 2, 1966, Mr. Justice John M. Harlan denied the application in all respects upon the ground that:

> "The papers before me fail to reveal the existence of any substantial federal question."

On September 28, 1966, petitioner applied for reconsideration of his request for a stay pending submission of his petition for certiorari. This was denied by Mr. Justice Harlan on October 4, 1966, the Justice stating: "I find no basis for interfering with my previous disposition". The petition for certiorari was not filed until October 12, 1966, in which this Court's jurisdiction is invoked under Title 28 U.S.C. 1257(3)

Reasons for Denying Certiorari

The vague and indefinite questions posed by petitioner for review by this Court reflect the absence of factual support in petitioner's statement of the case. At best, we are faced with a bald assertion that petitioner was disbarred without notice or opportunity to be heard.

The fact, however, as detailed in the opinion of the Appellate Division (23 A.D. 2d 356) and confirmed in the opinion of the Court of Appeals (18 N.Y. 2d 598), is that petitioner was accorded the full measure of due process of law.

His disbarment rests upon seven undenied charges of gross professional misconduct specified in a verified petition duly served upon him personally on December 17, 1964. (See Items #4 and #5 of original papers constituting the record filed with this Court.) For six months after he was served with the petition and order to show cause why he should not be disciplined he wilfully and deliberately refrained from interposing an answer denying any one of the numerous acts of misconduct alleged in the petition. Instead, he challenged the Appellate Division's jurisdiction to discipline him and asserted that the petition was "insufficient to constitute a statement or notice of charges, or to enable him to answer" (23 A.D. 2d 356, at 360).

In response thereto and upon his request the Appellate Division granted him permission to inspect all exhibits, minutes and records upon which the petition was based. Pursuant to this authorization he on thirty two separate days examined the evidence pertaining to the charges against him (23 A.D. 2d 356, at 360). And when he thereafter persisted in his refusal to raise a triable issue of fact respondent served petitioner with a motion for an order imposing discipline upon the ground that the allegations of the petition had not been denied and that petitioner's time within which to make any motions had expired. (See motion papers in Item #5 of record filed with this Court.) On the return day of the motion the court granted petitioner an adjournment and one month thereafter—the allegations of misconduct having remained undenied—the court entered its order of disbarment.

In August 1965 petitioner moved to vacate the order of disbarment and permit him to interpose an answer denying

the charges of the petition, and requested "that the matter be referred to an impartial referee for hearing". In response thereto, the Appellate Division by order entered on October 1, 1965 directed that the matter be referred to Justice Walter R. Hart, a Justice of the Supreme Court, for the purpose of:

> "(a) conducting hearings as to the issues raised by the petition and the denials to be asserted by respondent in his amended answer; and
>
> (b) render a written report setting forth specific findings as to such issues." (See Item #7 of record.)

On appeal to the Court of Appeals the order of disbarment was unanimously affirmed with the following opinion (18 N.Y. 2d 598):

> "Per Curiam. The Appellate Division was warranted in ordering the appellant's disbarment. Although the appellant had the opportunity, accorded by subdivision 2 of section 90 of the Judiciary Law, to be heard, he did not raise any triable issues, prior to entry of the order of disbarment, since he failed to interpose an answer denying any of the charges of misconduct leveled against him. The Appellate Division has granted his motion to vacate such order to the extent of giving him permission to file an answer and referring the issues raised by the answer to a Justice of the Supreme Court for the purpose of conducting a hearing and rendering a report (24 AD 2d 726). The appellant has thus been assured of an additional opportunity to be heard.
>
> It should be noted that the order of disbarment, as its recitals demonstrate, was predicated solely on the charges contained in the petition and, accordingly, in reaching our decision herein, we have dis-

regarded the intimations in the Appellate Division's opinion that the appellant made 'baseless written charges against members of the judiciary and members of the Bar' in view of the fact that the petition does not contain such a charge.

The order appealed from should be affirmed without costs."

Finally, after Mr. Justice Harlan denied petitioner's application for a stay pending submission of his petition for certiorari, petitioner appeared before the Justice designated by the Appellate Division to conduct the hearing petitioner had requested, but refused to proceed and walked out of the courtroom. This occurred on October 17, 1966 in the presence of the respondent.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

SOLOMON A. KLEIN
Respondent, Attorney Pro Se